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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 OAKLAND DIVISION

12 THE CENTER FOR INVESTIGATIVE
REPORTING AND PATRICK MICHELS,

13 Plaintiffs,

14 v.

15 U.S. DEPARTMENT OF HOMELAND
SECURITY,

16 Defendant.

Case No. 4:18-CV-02711 DMR

**STIPULATION RE: BRIEFING
SCHEDULE FOR MOTIONS FOR
SUMMARY JUDGMENT – CIV. L.R. 7-12
[PROPOSED] ORDER**

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20 Whereas, in the Joint Status Report the parties filed on July 24, 2019, the parties stated that they
21 would provide the Court a mutually agreeable briefing schedule for filing cross motions for summary
22 judgment. The motions will be filed to resolve the legal issue regarding documents of a third-party
23 consultant that Defendant asserts are exempted from disclosure by Exemption (b)(5) of the Freedom of
24 Information Act (“FOIA”), 5 U.S.C § 552(a)(4)(B). In *Rojas v. FAA*, 927 F.3d 1046 (9th Cir. 2019), the
25 Ninth Circuit recently held that Exemption (b)(5) applies to only records that the government creates
26 and retains without employing a third-party consultant. The government is evaluating whether to seek
27 rehearing of the panel majority’s opinion in *Rojas*. The deadline for the Solicitor General to file a
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petition for panel rehearing or rehearing *en banc* is Friday August 2, 2019. Because the Exemption (b)(5) issues Plaintiffs challenge are impacted by the *Rojas* opinion, if the Solicitor General files a petition for rehearing, Defendant will request that the Court put in abeyance the briefing schedule stated below, until the Ninth Circuit has issued a decision on the government's petition for rehearing. Plaintiff's position is that it will likely oppose that motion as *Rojas* is not the only case it relies on and the rule of judicial finality requires this case continue until actual changes are made to the law.

The parties' stipulate as follows:

On October 7, 2019, Defendant will file its motion for summary judgment. On November 8, 2019, Plaintiffs will file their cross-motion for summary judgment and opposition to defendant's motion. On November 27, 2019, Defendant will file its reply and opposition brief to plaintiffs' cross motion for summary judgment. On December 18, 2019, Plaintiffs will file their reply brief.

Respectfully submitted,

DAVID L. ANDERSON
United States Attorney

Dated: July 31, 2019

By: _____/s/
GIOCONDA R. MOLINARI
Assistant United States Attorney

D. VICTORIA BARANETSKY
The Center for Investigative Reporting

Dated: July 31, 2019

By: _____/s/*
D. VICTORIA BARANETSKY
The Center for Investigative Reporting
Attorney for Plaintiffs

**In compliance with Civil Local Rule 5-1(i), the filer of this document attests that all signatories listed have concurred in the filing of this document.*

[PROPOSED] ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED

DATED: _____

HON. DONNA M. RYU
United States Magistrate Judge